

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on February 16, 2005
at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 619, 2/12/2005; HB 643, 2/12/2005
HB 648, 2/12/2005; HB 658, 2/12/2005
HB 690, 2/12/2005

Executive Action:

HEARING ON HB 690

Sponsor: REP. GAIL GUTSCHE, HD 99, MISSOULA

Opening Statement by Sponsor:

REP. GAIL GUTSCHE opened the hearing on HB 690. This is an act that would direct the Department of Public Health and Human Services (DPHHS) to implement the identification and reporting of disease clusters in Montana. She submitted a letter from Jane Smilie, DPHHS, and amendments that were requested by DPHHS. The main issue was to delete the word "identify" and insert "investigate."

EXHIBIT (huh38a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.6}

Proponents' Testimony:

Wade Sikorski, Ph.D. in Political Science, Baker, Montana, gave some background in why he was interested in the investigation of disease clusters. In his community there was a high rate of childhood leukemia. He had asked for an investigation, but the Health Department said there was not a problem. He maintained that, through his research, there is still a problem. Fallon County has a cancer cluster rate that is ten times higher than expected. He also stated that there is a high rate of breast cancer in Fallon County. This goes hand-in-hand with leukemia. He gave statistics on the rate of breast cancer between Thailand and the U.S.

The Department had statistics on birth abnormalities throughout the U.S. on their website. There was an alarming pattern. The rate of birth abnormalities was concentrated in southeastern Montana. He gave statistics on the following counties: Bighorn (16%), Carter (21%), Custer (34%), Dawson (17%), Fallon (26%) Garfield (31%), Powder River (25%), Prairie (34%), and Rosebud (20%). Southeastern Montana has three times the rate of birth abnormalities than the other quadrants of Montana. There is a problem and he felt the Health Department should be addressing it and it should be a public issue.

He told of a real problem in Libby, Montana. Twelve hundred people out of 8,000 developed abnormalities on their lungs. The Health Department ignored it. He urged support for HB 690.

{Tape: 1; Side: A; Approx. Time Counter: 3.6 - 15}

Leslie McClain, Montana Environmental Information Center, expressed their support for the bill.

Jane Smilie, Administrator, Public Health and Safety Division, DPHHS, explained that the Division is responsible for collecting and analyzing information related to infectious and non-infectious disease as well as providing programs for prevention and control of disease. The Department supports the bill. She concurred with the amendments. They do have protocols in place to investigate reports of perceived and real clusters of various types of diseases. They work with local public health departments. She spoke at length concerning their work with public health problems.

{Tape: 1; Side: A; Approx. Time Counter: 15 - 18.8}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. JONATHAN WINDY BOY wondered if there had been any investigations in areas of mining like the Berkley Pit. **Mr. Sikorski** said there might have been under-reporting of problems in mining areas. He had read that Butte had a high rate of cancer back in the 1960's.

REP. WINDY BOY inquired if there was more recent data than 1960. **Dr. Kammy, DPHHS**, was able to say the Department has central tumor registry data from 1979 up to the present.

{Tape: 1; Side: A; Approx. Time Counter: 18.8 - 22.3}

REP. DON ROBERTS said that he had been on the Montana Tumor Board. Good records have been kept. Larger numbers are more helpful in determining statistics. He asked how the demographics are in Montana. **Ms. Smilie** concurred with **REP. ROBERTS** in that there are difficulties in doing that kind of work. They need five years worth of data to have a good and representative sample.

{Tape: 1; Side: A; Approx. Time Counter: 22.3 - 24.5}

REP. RON STOKER inquired what the Department would do differently whether or not the bill was passed. **Ms. Smilie** reiterated that the Department has been refining their protocols for disease cluster investigations and will continue to do that. She felt they would handle these concerns without legislation; but, she had no problem with the bill.

REP. MIKE MILBURN wondered what happened to the information once it was collected. **Ms. Smilie** replied that they collect information on an on-going basis from physicians, citizens, etc.

When received, they look at the county specific rates and do the best they can with small numbers. They compare numbers with the state and the rest of the country. If they feel it should move to the next level, they identify cases and interview people. They also contact the local health department.

Closing by Sponsor:

The Sponsor closed.

{Tape: 1; Side: A; Approx. Time Counter: 24.5 - 32}

HEARING ON HB 619

Sponsor: REP. ROBIN HAMILTON, HD 92, MISSOULA

Opening Statement by Sponsor:

REP. ROBIN HAMILTON opened the hearing on **HB 619**. He carried the bill because it removes a barrier to the competitive business environment and provides for a free flow of information in the health insurance industry without jeopardizing anyone's individual privacy. Currently, smaller groups with fewer than 50 members cannot get the summary health information in order to get a competitive bid for their people. A larger association can get bids and offer health care, but the smaller business member cannot. This bill gives the smaller member the same rights as the larger associations of which it may be a member. On Line 7, the current limit of "50" excludes 83% of Montana businesses. The change to "10" is very necessary. REP. HAMILTON offered a one word amendment and wanted it to be included in the bill.

EXHIBIT(huh38a02)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.9}

Proponents' Testimony:

Larry Kibbee, Attorneys Liability Protection Society, spoke as an employer. The bill is not complicated. It concerns an unfortunate prohibition in the flow of information that is needed by employers to provide the most competitive program of health care benefits to their employees at the best possible cost. If an employer wants to shop the competitive market as a free standing entity, he cannot. Statute says an employer cannot get summary health care information of a sufficient description in order to find a competitive bid. The association, which an employer may be a part of, has to provide the premiums paid and the losses. In other industries, like auto insurance or home owners insurance, if one goes to a company and they want to look

at your loss history, that is available to them. Only in health insurance is this information flow prohibited.

{Tape: 1; Side: B; Approx. Time Counter: 3.9 - 9.2}

Brad Dantic, General Counsel, ALPS Corporation, Missoula, explained to the Committee that, as an employer with skyrocketing group health insurance, it is incumbent on them to find the best-priced health insurance for their employees. This bill is critical in getting the flow of information that employers need to shop for insurance. It protects the privacy of the employees and enhances the ability of employers to get competitive bids from other carriers, and it helps employers to fulfill their fiduciary obligations to their employees. Since the employee is picking up part of the cost (25%), employers must do their best.

His company tried to do just that. They requested their claims information and received a response that they do not provide this information directly to a group within an association. Their contract is with the association and any information they provide would be sent to the association. They would not provide aggregate claims data. They would not share that with the employer. That left companies buying health insurance in the dark. He continued to speak on the problems and discussed HIPAA (federal Health Insurance Portability and Accountability Act of 1996--health records privacy). He had a handout from DPHHS that showed regulations that came out of HIPAA. It dealt with the disclosure of summary health information. HB 619 fits into the parameters of HIPAA. He urged the Committee to support the bill.

EXHIBIT(huh38a03)

{Tape: 1; Side: B; Approx. Time Counter: 9.2 - 18.5}

J. R. Chipman, President, Benefit Innovations, spoke in favor of the bill. After the passage of HIPAA in 1996, a fear developed among individuals, carriers and associations. They stopped providing information that might have been provided before then. He handed some information on HIPAA to the Committee. He gave five points in defense of the bill. In summary, he said if the Committee wants to protect the consumer, this bill will do that.

EXHIBIT(huh38a04)

{Tape: 1; Side: B; Approx. Time Counter: 18.5 - 27.6}

Bob Robinson, Chief Executive, Montana School Services Foundation, was strongly in support of HB 619. He gave his testimony and submitted his written testimony.

EXHIBIT(huh38a05)

{Tape: 1; Side: B; Approx. Time Counter: 27.6 - 32}

Erin McGowan-Fincham, State Auditor's Office, spoke in favor of the bill. They believe that the bill is HIPAA compliant.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.8}

Opponents' Testimony:

Steve Turkiewicz, President, Montana Bankers Association, and Manager, State Bankers Group Benefit Trust, stood in opposition and stated that they were concerned about the concept of one-for-all and all-for-one in a "guaranteed issue." Their plan began in 1947 and now have over 70 employers, 1,700 employees and 3,400 participants with \$10 million in premiums. They work for the group as a whole and not for single-issue problems. By law, to be eligible to provide a health plan in Montana, one is required to have guaranteed issue. That means one accepts every employer and employee. They feel that if HB 619 is the direction the Legislature wants to go, they would like to be able to make good business decisions; i.e., get rid of guaranteed issue. Let them accept or reject their members based on that issue.

{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 5.7}

Mary McCue, Executive Director, Montana Dental Association, explained that her Association has a small plan and covers about 350 people. Most are in offices of two or three. Their plan has worked extremely well and she feels HB 619 would be the death knell for their group plan.

Marilyn Olsen, Executive Vice President, Montana Auto Dealers Association, said they insure 80 dealerships in Montana covering approximately 1,600 employees with 585 carrying dependent coverage. They have been able to keep their rate increases to single digits. Part of the reason for this is they do not release individual claims; they are a group.

{Tape: 2; Side: A; Approx. Time Counter: 5.7 - 8.6}

Jani McCall, Employee Benefits Services, Inc., Billings, stood in opposition. They believe that it provides an unfair advantage to new companies that can cherry-pick groups with good claims experience and leave those without. She explained what pooling does for insurance. For pools within the State of Montana, HB 619 will create adverse selection. Associations throughout the State have been able to provide cost-effective plans to participants because of the commitment of participating employers to stay with the pool during good and bad years. Under this bill, participating employers would more likely go for lower rates in good years. Those groups, with bad years, will be forced to stay in a plan with no other insurer able to take them on at that time.

{Tape: 2; Side: A; Approx. Time Counter: 8.6 - 10.4}

Webb Brown, Montana Chamber of Commerce, opposed the bill because it would jeopardize the stability and growth of their plan.

{Tape: 2; Side: A; Approx. Time Counter: 10.4 - 11.8}

Jim Edwards, President, Mountain West Benefit Solutions, gave his testimony and submitted his written testimony.

EXHIBIT (huh38a06)

{Tape: 2; Side: A; Approx. Time Counter: 11.8 - 14.2}

Gary Forrester, Montana Contractors Association, concurred with the previous opposing testimonies. He wondered why HB 619 did not include union plans. He also wondered who would provide the information and how it would be paid for. It was not a simple matter.

{Tape: 2; Side: A; Approx. Time Counter: 14.2 - 15}

Jason Todhunter, Montana Logging Association, opposed HB 619 and concurred with the previous testimonies.

Tanya Ask, Blue Cross/Blue Shield of Montana, brought forward concerns about HB 619. She spoke about the decrease in the number of employees from "2 to 50" down to "2 to 10" and how information would be shared. When a similar bill came forward several sessions ago, they worked with the Auditor's Office and the sponsor to make sure the reforms were preserved that had been put into place for small groups in Montana. Small group is a guarantee issue only if one buys it from a health insurance company that is regulated by Title 33. The Auditor's Office at that point felt strongly, as Blue Cross/Blue Shield does, that they would be willing to consider a modification to this particular provision if groups of smaller than 50 are allowed to get the utilization information. Blue Cross/Blue Shield does not rate using past utilization information in the small-group market; and they cannot underwrite using that. She urged a do not pass.

{Tape: 2; Side: A; Approx. Time Counter: 15 - 18}

James Senterfitt, New West Health Services, concurred with Ms. Ask. He made some general comments about getting insurance in Montana.

{Tape: 2; Side: A; Approx. Time Counter: 18 - 21.5}

Mary Allen, Montana Association of Insurance and Financial Advisors, concurred with the opposing statements and said that anything that severely limits the access and affordability to health care is not good for the agents.

{Tape: 2; Side: A; Approx. Time Counter: 21.5 - 22}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RON STOKER asked how large a statistical group it would take before any individual considerations are valid. **Ms. Ask** replied the general number would be 100 people in order to have an idea of risk; and if an association were going to fully self-insure, the number would be 500-1,000. Under Montana law, associations, who purchase insurance and get to rate outside of small-group rating laws, must accept all small groups who come to them.

{Tape: 2; Side: A; Approx. Time Counter: 22 - 24.5}

REP. STOKER questioned Mr. Robinson on how his group worked and how they rated different groups. **Mr. Robinson** said they take all comers whether it's a one-room school house or a Double A school district and then explained their rating process.

{Tape: 2; Side: A; Approx. Time Counter: 24.5 - 26.7}

REP. DON ROBERTS wondered why the Auditor's Office was in support of the bill. **Ms. McGowan-Fincham** responded that they hoped HB 619 would open up competition.

REP. TOM FACEY questioned Mr. Edwards about the successful association plans that were listed in his exhibit. **Mr. Edwards** replied that they were all insured; none were self-insured.

REP. FACEY further questioned Mr. Edwards about what his understanding was on Page 2, Lines 13-15. **Mr. Edwards** said that trustees who are elected by members of the association have access to that information and that information would be given to the members as well. Some associations make a decision that they would make the entire claims information available to the individual firms for the entire association but not for individual members inside the association.

{Tape: 2; Side: A; Approx. Time Counter: 26.7 - 31}

REP. FACEY said that 83% of the firms in Montana have less than 50 employees. He asked if there was a number that Blue Cross/Blue Shield would feel comfortable with that is bigger than 10 and smaller than 50. **Ms. Ask** replied that, with Montana's small-group reform criteria being set at 2-50, they feel strongly that should be retained; otherwise, there could be adverse selection against the small-group pool.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.4}

REP. BILL WARDEN asked if it was very important to Mr. Edwards that these individual questionnaires be filled out. **Mr. Edwards**

replied that he had quit writing groups under 50 employees because it is prone to rate gyration. He had seen a 111% increase in one year. That is why he had gone to an association that brings small groups together and has large numbers to work with.

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 3.1}

REP. DAVE MCALPIN asked Mr. Kibbee for clarification of a previous statement. **Mr. Kibbee** explained, If an employer is providing a workers' compensation benefit, you can, in fact, get that kind of information. That is Workers' Compensation related and is not the same as an association that has a health care program."

{Tape: 2; Side: B; Approx. Time Counter: 3.1 - 4.8}

REP. MCALPIN inquired if he would have to insure all comers. **Mr. Kibbee** said that they would have to do that.

REP. STOKER wondered if Blue Cross/Blue Shield considered this type of information on small employers as proprietary to their business. **Ms. Ask** said that the information on a group of 2-10 or 2-50, is treated the same way because they are all written in the small-group market. Individuals can get their own information. Blue Cross/Blue Shield cannot give individual's specific information to the group unless the individual has authorized that their specific information be given out.

{Tape: 2; Side: B; Approx. Time Counter: 4.8 - 7.4}

REP. MCALPIN asked for a walk-through of the guarantee issue. **Mr. Dantic** gave that explanation.

{Tape: 2; Side: B; Approx. Time Counter: 7.4 - 9.2}

REP. MIKE MILBURN inquired, "If a group had been provided with guaranteed insurance for all and someone leaves and returns, would that rate be tiered for the individual or would the group be tiered." **Mr. Turkiewicz** said they use tiering and explained how they would rate the group.

{Tape: 2; Side: B; Approx. Time Counter: 9.2 - 12.1}

REP. MARY CAFERRO asked Mr. Dantic to explain how adverse selection would happen and how limiting access to health care would create an unaffordable climate. **Mr. Dantic** explained these two issues.

{Tape: 2; Side: B; Approx. Time Counter: 12.1 - 15.1}

Closing by Sponsor:

REP. HAMILTON closed and asked the Committee to think about the following statement: "If the biggest associations can deliver the best product for the best price, then they won't lose any members."

{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 15.9}

HEARING ON HB 658

Sponsor: **REP. JOHN SINRUD, HD 67, BOZEMAN**

Opening Statement by Sponsor:

REP. JOHN SINRUD opened the hearing on **HB 658**. The bill would require hospitals to post basic costs for medical procedures but not for medical emergency procedures. People should be able to know what they are paying for.

Proponents' Testimony: None

Opponents' Testimony:

Bob Olson, Montana Hospital Association, stood in opposition to the bill. People should be able to find out about costs. But one reason they objected to the bill was whenever a hospital applies for their license, they would have to give the Department a list of their prices and costs for procedures and also deliver a policy on how the hospital would deliver that information to clients in a non-emergency situation. Hospitals normally get a license for two to three years. This would create a problem.

Each client has individual billing because each client is different and requires different things. A hospital has about 80,000 items that have to be priced.

There are complaints, but hospitals do try to explain their costs. In 1997, the Association created a consumer-information pamphlet that was published for about five to six years. They stopped because consumers were not using the pamphlet. That information is still posted on their website. He handed out a pamphlet that shows what is on their website. It is quite comprehensive. He felt that hospitals are doing all they can to help consumers know and understand pricing and costs.

EXHIBIT (huh38a07)

{Tape: 2; Side: B; Approx. Time Counter: 15.9 - 26.7}

Gloria Hermanson, Montana Society of Ambulatory Surgery Centers, opposed HB 658 for most of the same reasons listed by Mr. Olson.

Informational Testimony: None

Questions from Committee Members and Responses:

REP. ART NOONAN asked about the number of hits on the Association's website. **Mr. Olson** replied that the numbers are very low.

Closing by Sponsor:

The Sponsor closed.

{Tape: 2; Side: B; Approx. Time Counter: 26.7 - 31}

HEARING ON HB 643

Sponsor: **REP. TIM DOWELL, HD 8, KALISPELL**

Opening Statement by Sponsor:

REP. TIM DOWELL opened the hearing on **HB 643** which would eliminate smoking in enclosed public places. He read some of his opening statements from the Montana Constitution, Article II, Section 3, under the declaration of rights. He stated that tobacco has been known to be harmful but the public had heard for years that secondhand smoke wasn't. He likened it to the Grace indictment and read part of an article on that.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 6.2}

Proponents' Testimony:

REP. JOHN WARD, HD 84 spoke in strong support of HB 643. Many businesses are already smoke free. Economic harm has been proven to be false. He mentioned that Ireland had become smoke free and they were not experiencing economic harm.

{Tape: 3; Side: A; Approx. Time Counter: 6.2 - 9.5}

Dr. Robert Shepard, Medical Director, New West Health Services, Helena, submitted a letter from Dr. Thomas Purcell, Medical Director of the Deaconess Billings Clinic Cancer Center in Billings, who supported this legislation. He then gave an overview of a study conducted by himself and Dr. Richard Sargent.

This study was published in the British Medical Journal. He submitted his testimony and the study.

[EXHIBIT\(huh38a08\)](#)

[EXHIBIT\(huh38a09\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 9.5 - 19}

Laura Fox, Representing Herself, Missoula, gave her testimony and submitted her written testimony and a picture of her husband, Dan, who died at age 46 from secondhand smoke.

[EXHIBIT\(huh38a10\)](#)

[EXHIBIT\(huh38a11\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 19 - 22}

Verner Bertelsen, Representing Himself, Helena, asked the Committee to support HB 643 because it is the right thing to do.

{Tape: 3; Side: A; Approx. Time Counter: 22 - 23.3}

Tyler Steinebach, President, Sophomore Class, Superior High School, Superior, stood in strong support of the bill. He was going to do everything he could to keep other kids from smoking and do what he could to make public places smoke free.

{Tape: 3; Side: A; Approx. Time Counter: 23.3 - 25.5}

Joy Bruck, Volunteer Advocate, AARP Montana, submitted her written testimony.

[EXHIBIT\(huh38a12\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 25.5 - 26.6}

Reverend Bob Holmes, Representing Himself, stood in support of HB 643 and said, "It did not violate property rights because we are not suppose to let someone else commit suicide."

{Tape: 3; Side: A; Approx. Time Counter: 26.6 - 28.6}

Dr. Jane Horton, Range Science, understood the issues very well and stood in strong support of HB 643. She had been exposed to secondhand smoke as a musician playing in bars and had bone cancer.

{Tape: 3; Side: A; Approx. Time Counter: 28.6 - 31}

James Schultz, Science Teacher, Middle and High School, was excited that this bill had finally come forward. He has three passions: students, music and making sure the world is rid of cigarettes. He urged the Committee to pass the bill.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 1.7}

Linda Stoll, Montana Local Health Officers Group, submitted a letter from Jani McCall, Deaconess Billings Clinic. She then submitted six letters of support from her group: Gallatin

County, Missoula County, Flathead County, Yellowstone County, Cascade County, and Lewis and Clark County.

[EXHIBIT\(huh38a13\)](#)

[EXHIBIT\(huh38a14\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 1.7 - 3.1}

Dr. Richard Sargent, Helena, submitted his written testimony and two charts.

[EXHIBIT\(huh38a15\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 3.1 - 13.3}

Cliff Christian, American Heart Association, concurred with the above proponents.

{Tape: 3; Side: B; Approx. Time Counter: 13.3 - 15.4}

The following are supporters who gave their names. Some had exhibits.

David Nimick, Helena

Lora Wier, Choteau

[EXHIBIT\(huh38a16\)](#)

Florence Anderson, Choteau

[EXHIBIT\(huh38a17\)](#)

[EXHIBIT\(huh38a18\)](#)

Nancy Semenza, Helena

[EXHIBIT\(huh38a19\)](#)

Orrin Tiberi, High School Senior, Helena

[EXHIBIT\(huh38a20\)](#)

[EXHIBIT\(huh38a21\)](#)

Linda Lee, Missoula

[EXHIBIT\(huh38a22\)](#)

Jim Aherns, Chairman, Alliance for a Healthy Montana and President, Montana Hospital Association

Beda Lovitt, Montana Medical Association

Mary McCue, Montana Dental Association

Christa Nye, American Cancer Society

{Tape: 3; Side: B; Approx. Time Counter: 15.4 - 23.4}

Opponents' Testimony: None

Informational Testimony:

Lori NewBreast, Blackfeet Tribe, spoke on the exemptions in HB 643. She was concerned about Section IV, Subsection 4(f). She handed in her testimony and supporting exhibits.

EXHIBIT (huh38a23)

Tom Harwell, MPH, Chief, Chronic Disease Prevention and Health Promotion Bureau, Montana Department of Public Health and Services (DPHHS), submitted his testimony with suggested amendments.

EXHIBIT (huh38a24)

{Tape: 3; Side: B; Approx. Time Counter: 23.4 - 32}

Questions from Committee Members and Responses:

REP. MCALPIN asked Dr. Sargent how difficult it is to be published in the British Medical Journal. **Dr. Sargent** explained there are four top journals in the world of which the British Medical Journal is one.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 0.3}

REP. ROBERTS inquired about a person who had been exposed to secondhand smoke for thirty minutes. **Dr. Sargent** replied that amount of exposure would give a person about the same physiological effects as smoking one or two cigarettes.

REP. ROBERTS asked if, after surgery, there is a difference in the healing process between a smoker and a non-smoker. **Dr. Sargent** explained that healing is much faster in a non-smoking person and he went on to say that it didn't matter whether it was first or secondhand smoke.

{Tape: 4; Side: A; Approx. Time Counter: 0.3 - 3.1}

REP. WAGMAN wanted to know if the sponsor would object to amending out all "whereas" statements in the bill. **REP. DOWELL** felt they were important in explaining the bill.

{Tape: 4; Side: A; Approx. Time Counter: 4.2 - 5}

REP. WINDY BOY asked if the suggested amendment was sufficient. **Ms. NewBreast** felt that it would be fine. ***{Tape: 4; Side: A; Approx. Time Counter: 5 - 6.9}***

REP. EATON inquired if the sponsor had coordinated the witnesses. **REP. DOWELL** answered that he had not. They came on their own.

REP. HENDRICK thanked his students who had come from Superior to testify.

{Tape: 4; Side: A; Approx. Time Counter: 6.9 - 9.2}

REP. MCGILLVRAY inquired about the economic impact on businesses in surrounding states who had a smoking ban. **Dr. Sargent** had data on large communities like San Luis Obispo, California. In a study, smoking bars had to ban smoking to stay in competition with non-smoking bars.

{Tape: 4; Side: A; Approx. Time Counter: 9.2 - 11.4}

REP. MCGILLVRAY asked about damages brought about by alcohol and smoking. **Dr. Shepard** said that the number one preventable cause of death is cigarette smoking. The second one is alcohol. The third one is secondhand smoke. Alcohol has one distinction: you can drink and not be damaged. Two to three drinks a day will not harm a person and can be a health benefit. The major struggle with alcohol is drinking and driving, and society is working hard to say 'no' to drinking and driving.

{Tape: 4; Side: A; Approx. Time Counter: 11.4 - 15}

REP. MILBURN asked for a more definitive answer concerning two to three drinks a day with students sitting in the audience. **Dr. Shepard** said he did not mean to make a statement in favor of alcohol. Alcohol and underage drinking is a big problem. More than three drinks a day is not good.

{Tape: 4; Side: A; Approx. Time Counter: 15 - 18.4}

REP. WARDEN inquired about 20% of motel/hotel rooms being allowed for smokers and wondered if that was typical in other states. **Mr. Christian** as a member of the Montana Innkeepers Association said he had far fewer than 20% in his motel. The averages in Montana are from 15-20%. There are some concerns in Great Falls. They have older hotels and are probably going to ask for an amendment in that area.

{Tape: 4; Side: A; Approx. Time Counter: 18.4 - 21.2}

Closing by Sponsor:

REP. DOWELL was impressed by the fact of no opponents. But he knew there would be opposition to his bill. He handed out an article from the New York Times telling about the smoking ban in New York City. There had been no economic impact at all. He spoke again about R. W. Grace and handed out a page on the court decision, specifically Number 186.

EXHIBIT (huh38a25)

EXHIBIT (huh38a26)

{Tape: 4; Side: A; Approx. Time Counter: 21.2 - 32}

HEARING ON HB 648

Sponsor: REP. DAVE MCALPIN, HD 94, MISSOULA

Opening Statement by Sponsor:

REP. DAVE MCALPIN opened the hearing on HB 648. The bill would provide incentives for employers insured by the State Fund to provide smoke-free workplace. The State Fund has a surplus almost every year and this could be used to reward employers who would provide a smoke-free workplace. He handed out a packet of case laws that proves there may be more lawsuits coming against employers who allow smoking.

EXHIBIT (huh38a27)

{Tape: 4; Side: B; Approx. Time Counter: 0 - 3.7}

Proponents' Testimony:

Kathy McGowan, American Cancer Society, stood in support of the bill and would like to see a smoking ban in all workplaces.

Cliff Christian, American Heart Association and American Stroke Association, believed that employers who allow smoking in their establishments are losing one-sixth of their employee's working day. Their insurance premiums are also higher.

{Tape: 4; Side: B; Approx. Time Counter: 3.7 - 6.4}

Beda Lovitt, Montana Medical Association, was in support of HB 648.

{Tape: 4; Side: B; Approx. Time Counter: 6.4 - 7}

Opponents' Testimony:

Matthew Cohn, Montana State Fund, handed out a brochure on Montana's Workers' Compensation System. He explained the system. They do have reserves for any actuaries that may arise over the years. Surpluses are monies that are set aside to deal with the ebb and flow when the actuaries are wrong. For instance, two years ago Montana State Fund lost \$37 million. If they had not had that surplus, their insurance rates would have gone up drastically. He had three problems with the bill: 1) It singles out one entity; 2) It creates administrative problems like who, what, where, and when; and 3) It puts them in a regulatory position.

EXHIBIT (huh38a28)

{Tape: 4; Side: B; Approx. Time Counter: 7 - 16}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY stated that if HB 643 passed into law, HB 648 would not be needed.

REP. NOONAN inquired about how much was in the surplus. **Mr. Cohn** replied that it is approximately \$140 million. It has been as high as \$160 million and as low as \$125 million recently.

REP. WAGMAN asked if it were true that Montana has some of the highest rates in the region, and if this bill would affect those rates. **Mr. Cohn** said that regionally, Montana does have some of the highest rates. He did believe there would be administrative costs, but the impact on the rates would be negligible.

{Tape: 4; Side: B; Approx. Time Counter: 16 - 18.4}

Closing by Sponsor:

REP. MCALPIN addressed the issues that Mr. Cohn had spoken about. He did not think it was unfair to the State fund as they are a public agency and have special privileges. There should be no administrative costs and should not be a hardship to the state fund.

{Tape: 4; Side: B; Approx. Time Counter: 18.4 - 20.4}

EXECUTIVE ACTION ON HB 395

Motion: **REP. BECKER** moved that HB 395 DO PASS.

Discussion:

CHAIRMAN BECKER proposed to have HB 395 sent to Appropriations and possibly become a part of HB 2.

Susan Fox explained that HB 395, with statutory changes, would come back to the floor as well.

CHAIRMAN BECKER asked Yellowstone County Commissioner Kennedy to speak to the Committee on a possible proposal.

Commissioner Kennedy said there was a possibility that all the counties could help with the funding. He had polled the counties and they thought the counties could help. They were willing to work with the state.

{Tape: 4; Side: B; Approx. Time Counter: 20.4 - 31}

REP. MCALPIN asked which general fund dollars would the county commissioners be looking at.

Commissioner Kennedy did not know at this point.

{Tape: 5; Side: A; Approx. Time Counter: 0 - 1.6}

REP. FACEY said that his County Commissioners were in favor of HB 395 and would be willing to work with the State.

REP. NOONAN said that the bill takes the cost and transfers it to the government. The discussion is now on how to fund these costs.

CHAIRMAN BECKER replied that there are programs which would encourage community-based services. The problem is where that money would come from.

{Tape: 5; Side: A; Approx. Time Counter: 1.6 - 4.3}

Commissioner Kennedy explained that as a pie is sliced, this funding pie is being sliced smaller and smaller. More services are being funded by the pie and suddenly there is not enough pie to go around.

REP. NOONAN felt if there was not a link between local community services and the alleviation of the costs on counties, counties would be encouraged to send people to the state hospital.

Commissioner Kennedy said that the system has to work together. It is not a small feat to get 56 counties to say they are willing to put money forward and bring it to the State. This bill would expand those dollars for community resources.

{Tape: 5; Side: A; Approx. Time Counter: 4.3 - 8.2}

REP. WAGMAN thought the discussion was out of the scope of executive action. He requested the debate remain among the Committee members.

REP. WARDEN inquired that if HB 395 should go to Appropriations, it could die in that committee. **CHAIRMAN BECKER** responded, "Yes."

The committee recessed for five minutes. Upon returning, Committee members requested time to speak with their county commissioners. **CHAIRMAN BECKER** withdrew her motion without objection.

{Tape: 5; Side: A; Approx. Time Counter: 8.2 - 9.2}

ADJOURNMENT

Adjournment: 7:15 P.M.

REP. ARLENE BECKER, Chairman

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT ([huh38aad0.PDF](#))